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JAN 07 2005

DIV OF OIL GAS & MINING

Manti-La Sal National Forest**Ferron/Price Ranger District****Ferron Work Center****115 West Canyon Road****P.O. Box 310****Ferron, Utah 84523**To: Tom MunsonFrom: Tom LloydSubject: HE Davis / MSHA Violate
LetterDate: 1/7/05

Time: _____

Number of pages (including cover): _____

Fax #: (435) 384-3296Telephone #: (435) 384-2372 or 384-2505

Comments:

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Date Mo Da Yr 11/17/2004	2. Time (24 Hr. Clock) 1110	3. Citation/ Order Number 6276572
4. Served To Cache Lounsbury, Foreman		5. Operator H. E. DAVIS CONSTRUCTION, INC.
6. Mine LEVAN PIT 52		7. Mine ID 42-02293 (Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

A near vertical highwall (approx. height 80 - 100 feet) existed above the feed deck where a Caterpillar 966F front end loader was removing stockpiled gypsum to feed the crusher plant. The highwall consisted of unconsolidated material with overhangs and was not sloped to the angle of repose to prevent a fall-of-material hazard to persons working below. A dozer was to be delivered to the mine site this morning to slope the bank; however, it was not onsite at the time of inspection.

(photos)

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See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 56.3130
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Section II—Inspector's Evaluation

10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104a		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				E. Citation/ Order Number
15. Area or Equipment				

16. Termination Due	A. Date Mo Da Yr 11/18/2004	B. Time (24 Hr. Clock) 1200
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Section III—Termination Action

17. Action to Terminate

18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)
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Section IV—Automated System Data

19. Type of Inspection (activity code) 01	20. Event Number 1081616	21. Primary or Mill P
22. Signature <i>David B. Finkbeiner</i>		23. AR Number 1304

MSHA Form 7000-3, Mar 85 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

ORDERS OF WITHDRAWAL

You are hereby ordered to cause immediately all persons, except those permitted under Section 103(j), 103(k) and/or 104(c) of the Federal Mine Safety and Health Act of 1977, to be withdrawn from, and to be prohibited from, entering the area of the mine described hereon until an Authorized Representative of the Secretary determines that the danger(s) and its causes no longer exist, the violation(s) of the mandatory health or safety standards have been abated or the emergency has been eliminated.

Section 104(b) - Failure to abate a 104(a) or (d)(1) violation in the time period given.

Section 104(d)(1) - Unwarrantable failure violation-subsequent to 104(a)(1) citation during same inspection or within 90 days after issuance of 104(d)(1) citation.

Section 104(d)(2) - Unwarrantable failure violation-subsequent to issuance to 104(d)(1) order-subsequent inspection-no intervening inspection of the mine in its entirety, which has disclosed no further unwarrantable failure violation.

Section 104(e)(1) - Pattern of violations order-within 90 days after 104(e)(1) pattern notification-violation that could significantly and substantially contribute to a health or safety hazard.

Section 104(e)(2) - Pattern of violations order-violation that could significantly and substantially contribute to a health or safety hazard-subsequent to issuance of 104(e)(1) order-subsequent inspection - no intervening inspection of mine in its entirety which has disclosed no further such violations.

Section 104(f) - Order-failure to comply with respirable dust standard by the end of time given in 104(f) citation at underground mines.

Section 104(g)(1) - Order-untrained miners.

Section 107(a) - Order-imminent danger.

Section 103(j) - Order-to supervise and direct rescue and recovery work following an accident.

Section 103(k) - Order-ensures safety of persons following an accident and requires approval of recovery plan.

CITATIONS

Pursuant to the Federal Mine Safety and Health Act of 1977, the undersigned Authorized Representative of the Secretary upon making an inspection or an investigation of the hereon designated mine on this date finds/believes that the following condition or practice exists, or has existed, in the mine area or on the equipment described hereon.

Section 104(a) - Violation of the Act, mandatory health or safety standard, rule, order or regulation.

Section 104(d)(1) - Unwarrantable failure-could significantly and substantially contribute to a health or safety hazard.

Section 104(f) - Citation-exceeding respirable dust standard at underground mines.

NOTICE TO PROVIDE SAFEGUARDS

[Coal Mines Only]

Section 314(b) - Notice to provide safeguards-additional requirements necessary in the judgment of an authorized representative to minimize hazards with respect to transportation of men and/or materials. Upon issuance of the safeguard notice, the additional requirement(s) is enforceable under Section 104 of the Act.

SAFETY AND HEALTH CONFERENCE

Operators and representatives of miners are afforded the opportunity to review with MSHA each citation and order issued during an inspection. Upon notice by MSHA, all parties have 10 days within which to submit additional information or request a safety and health conference with the District Manager or his designee. A conference request may include a request to be notified of, and participate in, a conference initiated by another party.

"SIGNIFICANT AND SUBSTANTIAL" VIOLATIONS

By checking the "significant and substantial" block, the inspector has indicated that, based upon the particular facts surrounding the violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature. Only "significant and substantial" violations can be considered in determining whether a pattern of violations exists.



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Sanpete Ranger District
540 North Main Street
Ephraim, UT 84627
Phone # (435) 283-4151
Fax # (435) 283-5616

m/023/44
023

File Code: 2810

Date: November 22, 2004

Tony Christofferson
Property/Environmental Manager
H.E. Davis Construction, Inc.
252 West Center
P.O. Box 1955
Orem, UT 84059

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JAN 07 2005

DIV OF OIL GAS & MINING

Dear Tony:

We have reviewed the Large Mining Permit Notice of Intent you submitted to us on November 1, 2004. We thank you for the addition of the aerial photos on your maps of the mine area.

A number of items need to be addressed before approval can be given. A supplement to the plan with the required information and with updated maps will be all that is required.

Below is an itemized list of the information we require for your Plan of Operations to be approved:

GENERAL INFORMATION

1. When is the proposed start-up date?
2. What is the duration of the operation (5 yrs, 10 yrs, etc.)?
3. Is the operation seasonal? If so, indicate the expected dates of operation.
4. What is the expected date for final reclamation?
5. Will the gypsum be hauled off on a regular basis or stockpiled for removal at a later date? If so, indicate the dates.
6. How much fuel is used on a daily basis? Show justification to store 10,000 gallons of fuel.
7. Provide a map(s) showing proposed expansion acreage by year for 10 to 20 years (life of mine). This should be based on current economics and anticipated market trends for your product.
8. How many people are employed and will be employed at the mine based on anticipated production rates?
9. How many daily trips will be taken (on average) by the trucks hauling gypsum?
10. What are the power requirements for the operation?



11. What depth will you be mining to?
12. Show complete addresses of ownership.
13. Map II-Ba – Need legend as with all of the maps.
14. Map II-E – should show acreages.
15. Map III-B – recalculate acreage.
16. Provide expected dates on when the soils, vegetation, fish, and wildlife data will be submitted.
17. Will topsoil stored on side of road and berms be seeded?
18. Provide plan for fines disposal.

ACCESS

1. Map III-B doesn't show where culverts will be located. What type of equipment will be used on this road?
2. Show access gates on map and if they will remain after reclamation.
3. Show where berms are located on map.

EQUIPMENT

1. If operation is seasonal, where will equipment be stored?
2. Provide quantity and type of equipment used on-site.

STRUCTURES

1. Map II-D shows a storage shed. What will be stored in it and will there be any other structures?
2. Will there be any generators, supply trailer, fuel tanks, explosives buildings, etc. and if so, where will they be located?

BONEYARD

1. Will there be 55-gallon drums stored in the boneyard? If so, how many and what will they contain?
2. Locate boneyard on map.

AIR QUALITY

1. What is the source of water for dust abatement? Do you need or have a permit? Please provide a copy of the permit.
2. How often will the Magnesium Chloride be applied and in what quantities?

WATER QUALITY

1. Located nearest springs on map and determine if monitoring is needed.
2. How will berms be constructed and from what material?
3. Are the berms shown in the area of disturbance and included in the acreage?
4. Show the proposed berms on map?
5. Will any sediment control remain after reclamation?

FISH/WILDLIFE

1. Include any effects known.

CULTURAL RESOURCES

1. Has a clearance survey been performed on proposed area of disturbance?
2. If so, provide us with results.

HAZMAT

1. Where will hazmat be stored on site?
2. Will any blasting materials be store on site? If so, where?
3. How often will hazmat be transported?
4. Page VI – 1 – specify what deleterious materials are.

BLASTING PROTOCOL

1. Specify safety precautions.

RECLAMATION

1. Provide post operation monitoring/maintenance plan.
2. VII-2 Reclamation of roads – where will the additional topsoil come from?
3. III-6 Topsoil should be salvaged and replaced for a plant growth medium.
4. VII-2 Show cross-section of highwalls and what they will look like at final reclamation.
5. Where are the ponds and water-control structures referred to in this section? Please include a maintenance plan.
6. VII-6 We prefer if this is changed to “placing topsoil evenly then pockmark the surface for moisture collection.”
7. How stable is the highwall material? Is it consolidated?
8. Interim seed mix needs to be same as final seed mix.

9. Specify plans on removing/reclaiming magnesium chloride areas.
10. Topsoil should be stored in stockpiles, not on side of road.

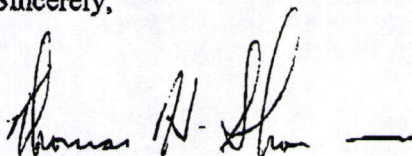
RECLAMATION SURETY ESTIMATE

1. Need itemized detail on calculations.
2. There are conflicting amounts of overburden to be removed each year.
3. Specify dollar amount for removing structures and equipment.
4. What about hazmat removal? Be more specific on the question.
5. Specify details on highwall barriers.

Please provide us with the above information within 30 days. We will be happy to provide assistance wherever necessary.

Thank you for your prompt and detailed response. Please call Joel Nowak at (435) 283-4151 if you have any questions or comments.

Sincerely,



THOMAS H. SHORE
District Ranger

cc: Daron Haddock, Thomas W Lloyd